

(3) Contributions of intellectual property rights generally do not represent the same cost of lost opportunity to a recipient as contributions of cash or tangible assets. The purpose of cost share is to ensure that the recipient incurs real risk that gives it a vested interest in the project's success.

(b) The contracting officer may include costs associated with intellectual property if the costs are based on sound estimates of market value of the contribution. For example, a for-profit firm may offer the use of commercially available software for which there is an established license fee for use of the product. The costs of the development of the software would not be a reasonable basis for valuing its use.

**§ 603.555 Value of other contributions.**

For types of participant contributions other than those addressed in §§ 603.535 through 603.550, the general rule is that the contracting officer is to value each contribution consistently with the cost principles or standards in § 603.625 and § 603.635 that apply to the participant making the contribution. When valuing services and property donated by parties other than the participants, the contracting officer may use as guidance the provisions of 10 CFR 600.313(b)(2) through (b)(5).

**FIXED-SUPPORT OR EXPENDITURE-BASED APPROACH**

**§ 603.560 Estimate of project expenditures.**

(a) To use a fixed-support TIA, rather than an expenditure-based TIA, the contracting officer must have confidence in the estimate of the expenditures required to achieve well-defined outcomes. Therefore, the contracting officer must work carefully with program officials to select outcomes that, when the recipient achieves them, are reliable indicators of the amount of effort the recipient expended. However, the estimate of the required expenditures need not be a precise dollar amount, as illustrated by the example in paragraph (b) of this section, if:

(1) The recipient is contributing a substantial share of the costs of achieving the outcomes, which must meet the criteria in § 603.305(a); and

(2) The contracting officer is confident that the costs of achieving the outcomes will be at least a minimum amount that can be specified and the recipient is willing to accept the possibility that its cost sharing percentage ultimately will be higher if the costs exceed that minimum amount.

(b) To illustrate the approach, consider a project for which the contracting officer is confident that the recipient will have to expend at least \$800,000 to achieve the specified outcomes. The contracting officer must determine, in conjunction with program officials, the minimum level of recipient cost sharing required to demonstrate the recipient's commitment to the success of the project. For purposes of this illustration, let that minimum recipient cost sharing be 60% of the total project costs. In that case, the Federal share should be no more than 40% and the contracting officer could set a fixed level of Federal support at \$320,000 (40% of \$800,000). With that fixed level of Federal support, the recipient would be responsible for the balance of the costs needed to complete the project.

(c) Note, however, that the level of recipient cost sharing negotiated should be based solely on the level needed to demonstrate the recipient's commitment. The contracting officer may not use a shortage of Federal Government funding for the program as a reason to try to persuade a recipient to accept a fixed-support TIA, rather than an expenditure-based instrument, or to accept responsibility for a greater share of the total project costs than it otherwise is willing to offer. If there is insufficient funding to provide an appropriate Federal Government share for the entire project, the contracting officer should re-scope the effort covered by the agreement to match the available funding.

**§ 603.565 Use of a hybrid instrument.**

For a RD&D project that is to be carried out by a number of participants, the contracting officer may award a TIA that provides for some participants to perform under fixed-support arrangements and others to perform under expenditure-based arrangements.

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This approach may be useful, for example, if a commercial firm that is a participant will not accept an agreement with all of the post-award requirements of an expenditure-based award. Before using a fixed-support arrangement for that firm's portion of the project, the agreement must meet the criteria in § 603.305.

### ACCOUNTING, PAYMENTS, AND RECOVERY OF FUNDS

#### **§ 603.570 Determining milestone payment amounts.**

(a) If the contracting officer selects the milestone payment method (see § 603.805), the contracting officer must assess the reasonableness of the estimated amount for reaching each milestone. This assessment enables the contracting officer to set the amount of each milestone payment to approximate the Federal share of the anticipated resource needs for carrying out that phase of the RD&D effort.

(b) The Federal share at each milestone need not be the same as the Federal share of the total project. For example, the contracting officer might deliberately set payment amounts with a larger Federal share for early milestones if a project involves a start-up company with limited resources.

(c) For an expenditure-based TIA, if the contracting officer establishes minimum cost sharing percentages for each milestone, those percentages should be indicated in the agreement.

(d) For a fixed-support TIA, the milestone payments should be associated with the well-defined, observable, and verifiable technical outcomes (*e.g.*, demonstrations, tests, or data analysis) that are established for the project in accordance with §§ 603.305(a) and 603.560(a).

#### **§ 603.575 Repayment of Federal cost share.**

In accordance with the Energy Policy Act of 2005 (Public Law 109-58), section 988(e), the contracting officer may not require repayment of the Federal share of a cost-shared TIA as a condition of making an award, unless otherwise authorized by statute.

## **Subpart F—Award Terms Affecting Participants' Financial, Property, and Purchasing Systems**

### **§ 603.600 Administrative matters.**

This subpart addresses “systemic” administrative matters that place requirements on the operation of a participant's financial management, property management, or purchasing system. Each participant's systems are organization-wide and do not vary with each agreement. Therefore, a TIA should address systemic requirements in a uniform way for each type of participant organization.

### **§ 603.605 General policy.**

The general policy for an expenditure-based TIA is to avoid requirements that would force participants to use different financial management, property management, and purchasing systems than they currently use for:

(a) Expenditure-based Federal procurement contracts and assistance awards in general, if they receive them; or

(b) Commercial business, if they have no expenditure-based Federal procurement contracts and assistance awards.

### **§ 603.610 Flow down requirements.**

If it is an expenditure-based award, the TIA must require participants to provide the same financial management, property management, and purchasing systems requirements to a subrecipient that would apply if the subrecipient were a participant. For example, a for-profit participant would require a university subrecipient to comply with requirements that apply to a university participant and would require a GOCO or FFRDC subrecipient to comply with standards that conform as much as practicable with the requirements in the GOCO/FFRDC procurement contract. Note that this policy applies to subawards for substantive performance of portions of the RD&D project supported by the TIA and not to participants' purchases of goods or services needed to carry out the RD&D.